

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHARLES COOPER, JR.,

Defendant.

Case No. 2:16-cr-00260-HDM-PAL

ORDER

The defendant has filed an "Emergency Motion to Consider Release in Order to Attend Funeral Services." (ECF No. 75). Both the government and probation oppose. (See ECF No. 77). The court is compelled to enter this order without the benefit of a reply due to the timing of the motion and the relief sought.

Pursuant to 18 U.S.C. § 3142(i), the court may "permit the temporary release of" the defendant to the extent the court "determines such release to be necessary for preparation of the person's defense or for another compelling reason." In considering a motion for temporary release, the court should examine "the defendant's dangerousness and risk of flight." *United States v. Williams*, 2020 WL 4431565, at *2 (W.D. Pa. July 31, 2020); see also *United States v. Navarro*, 2020 WL 5877816, at *2 (D. Nev. Oct. 2, 2020). In seeking temporary release from custody, the defendant bears the burden of showing by clear and convincing evidence that he will not flee or pose a danger to any other person or to the community. Fed. R. Crim. P. 32.1(a)(6); see also *Williams*, 2020 WL 4431565, at *2 (W.D. Pa. July 31, 2020).

1 In ordering that the defendant be detained pending his final
2 revocation hearing, the magistrate judge found that the defendant
3 posed both a flight risk and a danger to the community. The court
4 agrees, and nothing in the instant motion persuades the court to
5 conclude otherwise.

6 The defendant's criminal history includes felony convictions
7 for conspiracy to commit robbery and assault with a deadly weapon,
8 multiple arrests, charges and juvenile adjudications, and numerous
9 instances of violence. The latter include a domestic battery the
10 defendant committed on the mother of his child just days after
11 being released from custody in this case - conduct that included
12 grabbing her by the neck, pushing her into a closet and slamming
13 her onto a bed, as well as a threat to kill her and everyone in
14 the house at the time. A warrant remains outstanding in connection
15 with this assault. The defendant has also repeatedly demonstrated
16 his unwillingness to comply with supervision or report when
17 directed, as demonstrated by both his first and the pending
18 revocation proceedings. And the defendant has actively avoided
19 facing the consequences for his failure to comply. Before the
20 warrant in the pending revocation proceedings was issued, the
21 probation officer twice directed the defendant to report to the
22 Probation Office in connection with the domestic battery
23 allegations. The defendant failed to appear either time. He
24 effectively absconded and then remained a fugitive from this
25 court's warrant for six months before he was apprehended during a
26 traffic stop. Even then, during the stop, the defendant continued
27 his attempts to evade justice by lying about his identity.

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1 These factors all suggest that the defendant is a danger to
2 the community and a significant flight risk. The defendant has
3 otherwise failed to give adequate assurances that he is not a
4 flight risk or danger to the community. Further, the safety
5 protocols and logistics of his release plan have not been approved
6 by probation and are complicated by the ongoing COVID-19 epidemic.

7 The defendant's conduct compels the conclusion that he has
8 failed to meet his burden of establishing by clear and convincing
9 evidence that he does not pose a risk of flight or danger to the
10 community. As such, the motion for temporary release (ECF No. 75)
11 must be, and hereby is, DENIED.

12 IT IS SO ORDERED.

13 DATED: This 5th day of November, 2020.

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16 UNITED STATES DISTRICT JUDGE